

RESOLUTION NO. 01-77

A RESOLUTION ACKNOWLEDGING THAT THE BROADWAY ROSE THEATER IS A CITY OF TIGARD SPONSORED EVENT AND ESTABLISHING THE MODIFIED STANDARD AGREEMENT FORM AS AGREED UPON BY THE CITY OF TIGARD AND BROADWAY ROSE THEATER ORGANIZERS

WHEREAS, the City of Tigard Vision Task Force and Action Planning Committee Strategy for Community Character and Quality of Life calls for development of an overall approach for sponsoring community events, including long-standing events and new events, and development of a philosophy for event sponsorship; and

WHEREAS, City of Tigard Resolution No. 00-58 established procedures for City Sponsorship of Community Events; and

WHEREAS, Resolution No. 00-22 established that the Broadway Rose Theater is a City Sponsored Event and the initial amount of funding for this event is \$10,000; and

WHEREAS, on November 20, 2001, the Tigard City Council reviewed the proposed modified standard agreement as attached (Exhibit 1).

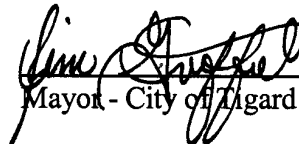
NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Broadway Rose Theater is a City of Tigard sponsored event with the length of sponsorship to be automatically renewed from year-to-year, with a one-year notice to the event organizers should the City decide not to renew funding.

SECTION 2: The Mayor is hereby authorized to sign the agreement attached (Exhibit 1).

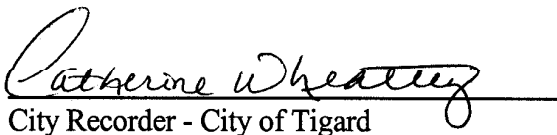
SECTION 3: The resolution is effective immediately upon passage.

PASSED: This 18th day of December 2001.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

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SPONSORSHIP AGREEMENT

This Sponsorship Agreement ("Agreement") is between the City of Tigard, an Oregon municipal corporation ("City") and the **Broadway Rose Theater** ("Organizer").

RECITALS

- a. Organizer is the organizer of the Broadway Rose Theater season (the "Event") and has asked the City to be a sponsor of the Event. Although open to the public, the Event put on by Organizer is a private event and not an official City event.
- b. City has passed a resolution which provides procedures and policies for City sponsorship of events.
- c. City has passed a resolution which authorized City sponsorship of the Event, subject to execution of this Sponsorship Agreement.
- d. City and Organizer have agreed to the scope of the City sponsorship and the relationship between the City and Organizer as set forth below.

AGREEMENT

1. This Agreement shall be effective when Organizer provides certificates of insurance as required by Section 11 below.
2. This Agreement shall remain in effect until terminated as provided in Section ____ below.
3. City shall reimburse (pay) Organizer up to _____ for fiscal year ____, for costs incurred to put on the Event. Payment shall be made only after Organizer provides proof that the costs have been incurred and paid by the Organizer and were costs of the Event. (Payment shall be made no more than 60 days prior to the Event to pay costs of the Event.) The amount of funds, if any, that the City will provide for future fiscal years shall be determined by the Tigard City Council in its sole discretion.
4. If the Event does not take place because of weather or other reason outside the control of the Organizer, Organizer shall repay the City the amount paid pursuant to Section 2, provided however, that Organizer shall not be required to refund any amount actually expended for the Event before cancellation. In determining whether proceeds from the City have been expended, Organizer shall balance expenditures for the Event against revenue related to the Event, and all excess income up to the amount stated in Section 2 shall be used to repay the City.

If the Event is canceled for any reason, the City shall not provide any in-kind services after the date of cancellation. If the Event is canceled for any reason, the City's facilities shall be available to the Organizer on the same basis that they are available to any other person or entity.

If the main location of the Event moves outside the City limits of the City of Tigard for a given year, the City may terminate or reduce payments and/or the provision of services as it determines appropriate. The termination or reduction shall be decided by the City Council in its sole discretion.

4. Organizer shall identify City as a sponsor of the Event and Organizer shall provide the following rights to City:
 - A. The right to be a part of the corporate sponsorship display in the lobby where the theater is located. Such display ornaments to be provided by the Organizer and to be of a size and design mutually agreed upon by the City and the Organizer.
 - B. The right to have additional signs at locations specified by the City.
 - C. The right to signage on all courtesy vehicles, if any, used by Organizer in connection with the Event.
 - D. The right to credit in placed by Organizer in connection with the Event.
 - E. The right to be named in all press releases issued by Organizer.
 - F. The right to be listed in any list of sponsors or to be included in any acknowledgment of sponsors.
 - G. The right to purchase advertising in the official program produced by Organizer.
 - H. The right to have the city logo displayed on an equal basis with other sponsors.
 - I. The right to use photographs of this Event generated by the City, its employees, agents or volunteers.

Nothing in the identification of the City as a sponsor shall state or imply that the Organizer is an agent of the City or that the City is responsible in any way for the Event.

6. Organizer shall provide sufficient means by which the public may obtain information about the Event, including but not limited to adequate phone lines to handle inquiries about the Event. The information phone lines shall be answered by a person or by a message that includes Event location, schedule and pricing information. Organizer shall provide City a written public information and communication plan at least 90 days before

the Event. The City may require revisions to the plan. If Organizer fails to provide a plan or to comply with the plan, the City may terminate this Agreement, suspend or reduce payments, or deny Organizer the use of City facilities or services. City's only obligation to provide information about the Event shall be to provide the Event's information telephone number and/or web site address.

7. Food and Beverage Service.
 - A. Organizer represents and warrants that it will cause all food and beverage vendors to represent and warrant, as a condition of their participation in the Event, that they will comply with all food service, sanitation and other regulations applicable to their services at the Event.
 - B. No alcohol is served at the Event.
 - C. Organizer represents and warrants that all music played at the Event, whether live, recorded or publicly broadcast, will be duly licensed for public performance by ASCAP, BMI, SESAC or such other performing rights societies or copyright owners as may be required by law, or else in the public domain. Organizer will indemnify and hold City harmless from and against any liability arising out of the performance of music at the Event.
8. The City and Organizer enter into this Agreement at arms-length and their only relationship is contractual. Neither party is an employee, agent, partner, or co-venturer in relationship to the other. Organizer is and remains an independent entity and has no authority whatsoever to act for the City. Organizer is not an officer, employee or agent of City as those terms are used in ORS 30.265. Organizer's officers, employees and agents are not the officers, employees, or agents of City those terms are used in ORS 30.265. Organizer, its employees and officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of City for any purpose whatsoever, nor are they authorized to do so. Organizer shall include a provision that it is not an agent of the City in all contracts it enters into with third parties.
9. Organizer is solely responsible for the organization of the Event and accepts responsibility and liability for all personal injury, property damage, and other damages arising from or related to the Event. The City has no responsibility for the organization or operation of the Event. To the fullest extent permitted by law, Organizer agrees to fully indemnify, hold harmless and defend the City, its elected and appointed officials, employees and volunteers from and against all claims, damages, losses and expenses incidental to the investigation and defense thereof, based upon or arising out of or incidental to damages or injuries to persons or property, in any way related to the Event, or any activity associated with the Event, except for claims, damages, losses and expenses that are solely attributable to the actions of the City. Organizer's Agreement to indemnify, hold harmless and defend the City extends to all claims damages, losses and

expenses caused by or alleged to be caused by the fault or negligence in whole or in part of Organizer's agents, contractors, sub-contractors, employees or any third-parties that are in any way related to the Event. This provision is essential to the City's Agreement to sponsor the Event and may not be severed from this Agreement.

10. Organizer shall include in all Event-related contracts with third parties a provision requiring the third party to defend, hold harmless, and indemnify the City as to any claim arising from the actions or negligence of the third party and shall include in those contracts a provision requiring the third parties to maintain adequate liability insurance naming the City as an additional insured. Organizer shall require contracts of all third parties that provide food or beverage service, rides or other entertainment at the site and shall require that the insurance covers the type of service or goods provided. Organizer shall provide City with the name, address and phone number of all third parties with which it contracts, a general description of the work the contractor will perform and a copy of each contract. Organizer shall also provide City with the name, address and phone number of all other sponsors of the Event.
11. During the term of this Sponsorship Agreement, Organizer shall purchase and maintain insurance of the types and in the amounts specified in this section. Organizer shall furnish acceptable certificates of insurance to City at least 60 days before commencement of the Event, or within ten (10) days after execution of this Agreement if this Agreement is executed less than 70 days before the Event. Organizer shall indemnify City for any liability or damages that City may incur due to Organizer's failure to purchase or maintain any required insurance. Organizer shall indemnify City for any liability or damages that City may incur due to Organizer's failure to purchase or maintain any required insurance. Organizer shall be responsible for the payment of all premiums and deductibles. Organizer shall maintain insurance of the types and in the amounts described below.

A. General Liability Insurance

Organizer shall obtain, at Organizer's expense, and keep in effect during the term of this Agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The following limits of insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$1,000,000
Products - Completed Operations Aggregate	2,000,000

Personal and Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one Fire)	50,000
Medical Expense (Any one Person)	5,000
Employers Liability	500,000

B. Commercial Automobile Insurance

Organizer shall also obtain, at Organizer's expense, and keep in effect during the term of this Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. This requirement applies if the Organizer provides transportation to or from the Event for participants.

C. Workers Compensation Insurance

Organizer shall provide coverage for all employees coming under the scope of State Workers Compensation laws. This shall include Employers Liability Insurance with coverage of not less than \$500,000 per accident.

D. Additional Insured Requirement

The City of Tigard, its officers, directors, employees, and volunteers shall be added as additional insured with respect to the Event. All Commercial General Liability insurance policies will be endorsed to show this additional coverage.

E. Insurance Carrier Acceptability

An insurance company acceptable to the City of Tigard must underwrite coverages provided by the Organizer.

F. Evidence of Insurance

As evidence of the insurance coverage required by this Agreement, the Organizer shall provide a certificate of insurance to the City. No use of City facilities,

payment or other benefit will be provided by the City to the Organizer until the required certificates have been received and approved by the City. The certificate will specify and document all provisions required by this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

H. Cancellation Provisions

Coverage may not be canceled or materially changed without 30 days written notice to the City. The notice of cancellation provision shall be physically endorsed on the Commercial General Liability policy.

Failure of City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Organizer's obligation to maintain such insurance.

The insurance required under this paragraph shall require the insurer to give City not less than thirty (30) days' notice prior to termination or cancellation of coverage.

Organizer shall require all entities it contracts with to provide service at the Event to provide insurance with the same limits required of Organizer.

12. Organizer shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances and obtain all required permits. Required permits may include but are not limited to:

Food Handler Permits

Fees for permits for the Event may be waived.

13. Notices. All notices required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given when delivered or sent by prepaid certified or registered mail or fax:

If to Organizer, to: _____
(Address) (Fax)

If to City, to: _____
(Address) (Fax)

or such other address as either party may designate in writing to the other party for this purpose.

14. Other Warranties. Organizer represents and warrants that:
- A. Organizer has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;
 - B. Organizer's trademarks do not infringe the trademarks or trade names or other rights of any other person;
 - C. Organizer has all government licenses, permits or other authorizations necessary to conduct the Event as contemplated under this Agreement; and
 - D. Organizer will comply with all applicable laws, regulations and ordinances pertaining to the promotion and conduct of the Event.
 - E. Organizer will ensure that all persons and entities it contracts with to provide services or goods at the Event shall have the knowledge, experience and capacity to provide the goods and services.
15. Records and Reporting
- A. Organizer shall maintain a complete set of records relating to the Event, in accordance with generally accepted accounting procedures. The records must be maintained for at least three years from the date they are generated. Organizer shall permit the authorized representatives of the City to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Organizer relating to the Event while this Agreement is in effect and for three years after termination of this Agreement. The obligations imposed by this section shall survive termination of this Agreement.
 - B. Organizer shall request funding on an annual basis for future years within the City's established budget cycle. The request for funding shall include:
 - i. Financial statements from the previous year's Event.
 - ii. The budget for the Event to the year for which funding is requested.
 - iii. An Event schedule.
 - iv. A list of events associated with the Event.
 - v. The amount of funds requested and the purpose for which the funds will be used.
 - vi. A list of all other services, facilities, or other benefits, that Organizer is requesting from City.
 - C. Failure to comply with subsections A or B of this section shall constitute cause for termination of this Agreement by the City.

16. **Governing Law and Consent to Jurisdiction.** This Agreement is subject to and shall be construed in accordance with the laws of the State of Oregon, except for choice of law provisions. City and Organizer both consent to jurisdiction in the state and federal courts located in Oregon. Organizer shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279.312, 279.314, 279.316 and 279.320, which are hereby incorporated by reference.
17. **Non-Assignment.** Neither party shall assign this Agreement without the prior written approval of the other party, except that City may assign this Agreement to any successor entity.
18. **Complete Agreement.** This Agreement represents the entire Agreement between the parties and supersedes all other agreements, if any, express or implied, whether written or oral. Organizer has made and makes no representations of any kind except those specifically set forth herein.
19. **Binding Agreement.** This Agreement shall be binding upon the parties, their successors and assigns.
20. **This Agreement may be terminated by mutual agreement of the parties.** Either party may terminate this Agreement for no reason by providing notice of termination one year prior to termination. Either party may terminate this Agreement for default by providing 30 days' notice. If the other party may cure the default and does so within 30 days, the Agreement shall not terminate. City may terminate this Agreement without notice by vote of the City Council if the City Council determines that it is in the public interest to do so. Any breach of this Agreement shall be considered a default. The indemnification provisions shall survive termination.
21. **If any provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, either party may, within 30 days of the court decision, request that the parties meet to negotiate an amendment to compensate for the loss of the provision declared invalid, void or unenforceable.** If the provision declared invalid, void or unenforceable is one that this Agreement provides is not severable, the parties shall meet as soon as possible to attempt to renegotiate this Agreement. If after good faith efforts to renegotiate the Agreement the parties cannot agree on an amendment, either party may declare the Agreement terminated. In that event, all obligations intended to survive termination, including indemnification obligations and records inspection requirements, shall remain effective but the Agreement shall be otherwise be terminated. In the event of termination under this provision, any payments made by the City to Organizer shall be refunded, except that Organizer shall not be required to refund any amount actually expended for the Event. In the event that neither party requests renegotiation within 30 days and the provision declared void, invalid or unenforceable is not one that the Agreement provides is non-severable, the Agreement shall remain in effect except for the provision declared invalid, void or unenforceable.

22. Except for those responsibilities expressly reserved to the City Council, all rights and duties of the City may be exercised by the City Manager or designee.

ORGANIZER

[Name]

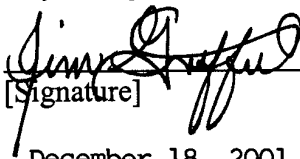
[Signature]

[Date]

SPONSOR

James Griffith, Mayor

City of Tigard



[Signature]

December 18, 2001

[Date]

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